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 4 Tel:702-243-3427  
 5 Plaintiff in Pro Per

✓  
 FILED  
 U.S. DISTRICT COURT  
 DISTRICT OF NEVADA

2012 SEP -7 P 2:20

U.S. DISTRICT COURT  
 DISTRICT OF NEVADA

6 **UNITED STATES DISTRICT COURT**  
 7 **DISTRICT OF NEVADA**

8 Joseph A. Guerra,  
 9 Plaintiff,

10 vs.

11 JUST MORTGAGE, INC.; CHASE HOME  
 12 FINANCE, LLC.; MERS and  
 13 DOES 1-10,

14 Defendant.

) **Case No.:2:10-cv-00029-KJD-RJJ**

) **MOTION FOR RECONSIDERATION**  
 ) **OF ORDER (DOC#105)**  
 ) **UNDER RULE 60 (B) (4)**

15 **Introduction**

16 The Plaintiff brings this Motion to respectfully request  
 17 that this Honorable Court reconsider and vacate of the Order on  
 18 Doc#105 that imposed sanctions by Magistrate Judge Johnston. It  
 19 is perhaps understandable that this Court was troubled by  
 20 Plaintiff's unintentional and inadvertent noncompliance with the  
 21 Settlement Conference Order by the Magistrate Judge when he  
 22 failed to attend this Conference on June 29, 2012. Like I have  
 23 said before in my "Objection To An Order" document and at my  
 24 Hearing to Show Just Cause, "the reason for not appearing at the  
 25 Conference was because I was awaiting a Ruling from Judge Dawson  
 26 on my Objection to Magistrate Johnston's Order". And, being a  
 27 Pro Per person, I just wasn't aware of the consequences at the  
 28

1 time because I really thought that when a party makes an  
2 Objection whether in court or on a pleading document (it's Court  
3 Record), a Judge must make a ruling because in both instances  
4 he/she just can't stand silent because a decision must be made  
5 in order for the case to move forward.  
6

7 Sanction is not a catch-all solution for every violation of a  
8 court order, no matter whether the violation was intentional or  
9 whether the underlying order was enforceable in the first place.  
10 This court has other means of ensuring compliance with its  
11 orders and addressing inadvertent violations. Its decision to  
12 use its inherent power to impose this sanction against the  
13 Plaintiff was overly excessive and is improper and should be  
14 vacated.  
15

16  
17 The legal principle relevant to this Motion are  
18 straightforward, and they are well-settled. A person may not be  
19 imposed a sanction for violation of a court order unless that  
20 person had actual knowledge of the duties imposed by the order  
21 and violated them willfully and knowingly which in this  
22 situation, the Plaintiff was not. Even if there is a knowing  
23 violation, a finding of a sanction imposition cannot be based on  
24 an underlying order that is an unconstitutional prior restraint,  
25 entered without any of the necessary procedural or substantive  
26 prerequisites required by Nevada Law.  
27  
28

1                    Memorandum of Points and Authorities

2            1. It is undisputed that the Plaintiff did not act in  
3 willful and intentional disobedience of the Magaistrate Judge's  
4 Order. Furthermore, there is no basis on which to impose  
5 sanctions on the Plaintiff without actual knowledge of his duty,  
6 and without evidence that he acted willfully and knowingly in  
7 being disobedient to that duty, Plaintiff's conduct simply does  
8 not rise to the level of such a severe sanction punishment.  
9

10           2. More importantly, the Court is vested with ample  
11 inherent authority and discretion, to compel compliance with its  
12 order and sanction noncompliance. Courts routinely sanction  
13 noncompliance of their orders through a variety of means. Such  
14 as, it could have ordered the Plaintiff to pay Court Costs  
15 incurred for the Settlement Conference and subsequently Schedule  
16 another Settlement Conference and make the Plaintiff pay for the  
17 second Settlement Conference.  
18

19           3. "[D]istrict courts enjoy very broad discretion to use  
20 sanctions where necessary to insure . . . that lawyers and  
21 parties . . . fulfill their high duty to insure the expeditious  
22 and sound management of the preparation of cases for trial." Lee  
23 v. Max Int'l, LLC, 638 F.3d 1318, 1320 (10<sup>th</sup> Cir. 2011) (internal  
24 citation and quotation omitted). More specifically, "the  
25 district court has discretion to impose sanctions for discovery  
26 abuses under Rule 37 . . . ." Kern River Gas Transmission Co. v.  
27  
28

1 617 Acres of Land, More or Less, in Salt Lake Cnty., Utah, 156  
2 Fed. App'x 96, 101 (10<sup>th</sup> Cir. 2005) (internal citation omitted).  
3

4 4. Plaintiff has always felt that the Magistrate Judge right  
5 from the beginning at the first Hearing had a bias against him  
6 because he is Pro per, a minority and latino. And at times he  
7 would suggest to Plaintiff to consult with a professional lawyer  
8 when he knew I couldn't afford one, his tone of voice towards  
9 me, and telling Plaintiff "he could transfer my case to the  
10 State District Court." However, the Plaintiff has the confidence  
11 of our Court System, particularly under Scheuer v. Rhodes, 416  
12 U.S. 232, 94 S. Ct. 1683, 1687 (1974) Note: "By law, a judge is  
13 a state officer. The judge then acts not as a judge, but as a  
14 private individual (in his person). When a judge acts as a  
15 trespasser of the law, when a judge does not follow the law, the  
16 Judge loses subject-matter jurisdiction and the judges' orders  
17 are not voidable, but **VOID**, and of no legal force or effect. The  
18 U.S. Supreme Court stated that "when a state officer acts under  
19 a state law in a manner violative of the Federal Constitution,  
20 he comes into conflict with the superior authority of that  
21 Constitution, and he is in that case stripped of his official or  
22 representative character and is subjected in his person to the  
23 consequences of his individual conduct. The State has no power  
24 to impart to him any immunity from responsibility  
25  
26  
27  
28

1 to the supreme authority of the United States."

2       5. The Magistrate Judge and the verbal assault (told me  
3 that my house will be foreclosed within six (6) months during  
4 the March 2010 Hearing) upon the Plaintiff falls within the  
5 category of the "pervasive bias exception to the extrajudicial  
6 source doctrine."  
7

8 It is wrong in theory \_ \_ \_ , to suggest, as many opinions have,  
9 that "extrajudicial source" is the only basis for establishing  
10 disqualifying bias or prejudice. It is only common basis, but  
11 not the exclusive one, \_ \_ \_ A favorable or unfavorable  
12 predisposition can also deserve to be characterized as "bias" or  
13 "prejudice" because, \_ \_ \_ as to display clear inability to  
14 render fair judgment. (That explains what some courts have  
15 called the "pervasive bias" exceptionn to the "extrajudicial  
16 source" doctrine, see e.g., Davis v. Board of School Comm'rs of  
17 Mobil County, 517 F.2d 1044, 1051(CA 5 1975), cert. denied, 425  
18 U.S. 944 (1976).  
19  
20

21       6. The "high degree of favoritism and antagonism" displayed  
22 by the Magistrate Judge towards the Plaintiff show that a fair  
23 and impartial ruling was impossible for my case to survive.  
24

25       7. "A court should be cautious to exerting its inherent  
26 power and must comply with the mandates of due process" First  
27 Bank of Marietta v. Hartford Underwriters Insurance Company,  
28

1 2002 U.S. App. Lexis 21117, - 25; 2002 Fed App. 0356p (6<sup>th</sup> Cir  
2 2002); In Re Atlantic Pipe Corp., 304 F.3d 136, 143 (1<sup>st</sup> Cir.  
3 2002).

### 4 5 Conclusion

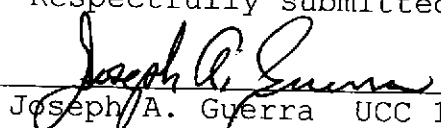
6 There is absolutely no legitimate reason for Magistrate  
7 Judge's Order to impose such a severe monetary sanction against  
8 the Plaintiff for acts which violated his civil and  
9 constitutional Rights under color of law, while Plaintiff had  
10 been attempting to exercise his statutory, civil and  
11 constitutional Rights. When a party had been denied the  
12 fundamental right of due process of law, he has a right to seek  
13 a redress of the error.  
14

15 A Magistrate Judge has an obligation to a pro per person,  
16 and act and rule in a manner that will guarantee the integrity  
17 of the court and the integrity of the Judicial System as a  
18 whole. Relief, setting aside the Ruling is necessary, required  
19 and just in this matter.  
20

21 Since this is a pro per abuse of discretion of power by a  
22 Magistrate Judge, the District Court must GRANT the Plaintiff's  
23 motion to vacate the sanction Order, Doc#105 under Rule 60(b)(4).  
24

25  
26 Respectfully submitted,

Date

27   
28 Joseph A. Guerra UCC 1-308  
Plaintiff in Pro Per

September 07, 2012

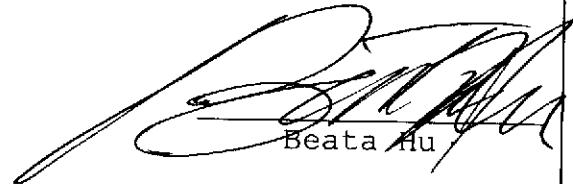
**CERTIFICATE OF SERVICE**

I hereby certify that on September 07, 2012 I mailed a copy of this **MOTION FOR RECONSIDERATION OF ORDER (Doc#105) UNDER RULE 60(B) (4)** to the following parties by First Class Mail:

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